IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Smt.Rama Soni & ors. Vs. Sher Khan & ors.

S.B.CIVIL MISC. APPEAL NO.281/1996

Against the award dated 21.11.1995 made by the Motor Accidents Claims Tribunal-I Jodhpur in Claim Case No.26/1995.

Date of Judgment : 13.10.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Rajesh Panwar with Mr.S.K.Sankhla for the appellants

Mr.J.M.Bhandari) for the respondents
Mr.R.K.Singhal)
Mr.Sanjeev Johari)

BY THE COURT:

This appeal has been preferred against the award dated 21.11.1995 made by the Motor Accidents Claims Tribunal, Jodhpur in Claim Case No.26/1995 whereby the Tribunal has proceeded to reject the claim for compensation made by the wife and children of the deceased Lal Bahadur Soni who had expired in a vehicular accident involving a truck and a jeep on the ground that the claimants have not pleaded and proved negligence of either of the vehicle drivers.

The claimant-appellants averred in their claim application that on 10.04.1987 the deceased was Lal Bahadur Soni was traveling with other passengers in a taxi bearing registration No. RST 4582 coming to Jodhpur from Pali that was involved in an accident with a truck bearing registration No. RSB 4223 and Lal Bahadur Soni died on the spot due to the injuries sustained in the accident. It was submitted that the deceased Lal Bahadur Soni was 26 years of age; was employed in Indian Oil Corporation on a monthly salary of Rs.1,644/-; was contributing to the dependents about Rs.1,200/-per month; and has left behind his wife, a son and a daughter. The claimants claimed compensation for pecuniary and non-pecuniary losses in the sum of Rs.6,00,800/- against the drivers, owners and insurers of both the vehicles involved in the accident.

Non-applicants No.4 Praveen Nath and No.5 Mohan Nath, driver and owner of the jeep aforesaid filed their reply to the claim application stating general denial of the claim averments. Non-applicant No.6 United India Insurance Company Limited, insurer of the jeep in its reply while stating general denial of the claim averments submitted that the accident occurred for the negligence of the truck driver and the jeep driver was not responsible towards the accident. The

said insurer while admitting the fact that the jeep in question was insured with it submitted, inter alia, that the deceased Lal Bahadur Soni was travelling in the jeep as passenger and even if any responsibility towards accident be found in the jeep driver, the liability of the insurer towards such passenger was limited to Rs.15,000/-. Non-applicant No.2 Balveer Kumar, owner of the truck in his reply submitted that the accident occurred for the negligence of the jeep driver and averred that the truck in question was standing stationary on the left side of the road; that the jeep in question hit the truck from behind in a brisk speed; and that the accident occurred exclusively for the fault of the jeep driver. It was also alleged that the claim application was not filed within six months against him and was, therefore, barred by limitation. Non-applicant No.3 National Insurance Company Limited, insurer of the truck in its separate reply while again stating general denial of claim averments alleged violation of policy conditions by the insured and also alleged that its liability was limited upto Rs.1,50,000/-.

On the pleadings of the parties, the Tribunal framed the following issues for determination of the questions involved in the case:-

> "1- आया स्व0 लाल बहादुर सोनी बरोज दुर्घटना इण्डियन ओईल कॉरपोरेशन जोधपुर में सेवारत था तथा उसकी मासिक आय 1644/- रूपये प्रतिमाह थी। मृतक की जन्म तिथि 10-12-60 थी ?

2- आया प्रार्थीगण स्व. लाल बहादुर सोनी के वारिसान हैं एवं माफिक प्रार्थना पत्र रूपये 6,00,800/- रूपये बतौर मुआवजा पाने के हकदार है ?

3- आया मृतक अपने परिवार हेतु परवरिश, रहवास आदि के लिये 1200/- माहवार व्यय करता था ?

4- आया प्रार्थीगण स्व. लाल बहादुर की मृत्यु के कारण बिछोह, मानसिक पीड़ा आदि का मुआवजा 1,40,000/- पाने के हकदार हैं ?

5- आया प्रार्थीगण मुआवजे की राशि पर तारीख दायरी प्रार्थना- पत्र से ब्याज बशरह 18% पाने के हकदार हैं ?

6- आया अप्रार्थी सं0 2 के खिलाफ क्लेम मयाद बाहर है ?

7- आया दुर्घटना प्रतिवादी शेर खॉ की गफलत व लापरवाही के कारण जीप संख्या आर.एस.टी. 4582 के टक्कर मारने से हुई । अत: अप्रार्थी संख्या 4, 5 व 6 हरजाना अदायगी के जिम्मेवार नहीं हैं ?

(अप्रार्थी सं0 4, 5 व 6)

8- आया दुर्घटना जीप चालक प्रवीणनाथ द्वारा जीप लापरवाही व तेज रफतार से जीप सं0 आर.एस.टी. 4582 चलाकर टक्कर मारने के कारण हुई । अत: अप्रार्थी सं0 2 व 3 अदायगी हरजाना के जुम्मेवार नहीं हैं ?

(अप्रार्थी सं0 2 व 3)

9-क्या ट्रक ड्राईवर व मालिक के खिलाफ कोई कॉज ऑफ एक्शन पैदा नहीं होता। अत: वाद आदेश 7 नियम 11 जाब्ता दीवानी के अन्तर्गत काबिल खारिज है?

(अप्रार्थी सं0 2)

10- दादरसी क्या होगी ?"

Record of the claim case shows that in evidence PW-1 Rama Soni was examined on 18.02.1991 and then an application was moved for dispensing with formal proof of documents; the said application was allowed on 29.07.1991

and the claimants closed their evidence on 17.09.1991. It appears that the matter got tagged with some other claim cases relating to the same accident and was adjourned repeatedly from 14.10.1991 to 30.01.1995. Then the matter was placed in Lok Adalat and when no settlement was coming forth, the matter was again posted for non-applicants' evidence and was again adjourned several times but the non-applicants led no evidence at all. Ultimately on 06.10.1995 the Tribunal considered it appropriate to close down the evidence of the non-applicants and then parties were heard and the Tribunal proceeded to decide the claim application by the impugned award dated 21.11.1995.

While taking up issue No.1 learned Judge of the Tribunal has found that the deceased was employed with Indian Oil Corporation and was earning salary of Rs.1,600/-. In issue No.2 it has been observed that the claimants are heirs of the deceased being his wife, daughter and son respectively. Thereafter the learned Judge has taken up the question as to whether the applicants were entitled for compensation amount and then has made observations that the claims for compensation under the Motor Vehicles Act are based on 'fault liability' and, therefore, a claimant is required to establish the element of negligence with the vehicle driver for the purpose of recovering compensation. The learned Judge has

observed that there were no pleadings regarding negligence in this case and it was not stated whether the accident occurred for the negligence of both or any of the drivers. Then the learned Judge has observed that merely because two vehicles were involved in accident and a person died, it cannot be accepted that his heirs were entitled for compensation because such accident could occur due to many reasons and that heirs of the deceased would become entitled for compensation only when they would say that accident was a result of negligence of any particular vehicle driver and then would establish such negligence. Learned Judge has proceeded to observe that necessary elements for fault liability having not been pleaded the claimants were not entitled for any compensation. Then referring to issue No.3, the learned Judge has observed that the deceased was contributing about Rs.1,060/- (per month) to his family. Issue No.4 has been decided against the claimants with reference to finding on issue No.2 and similarly when the claimants were found not entitled for any compensation, issue No.5 has also been decided against them. Of course in issue No.6 it has been found that the claim application was within limitation.

The learned Judge has thereafter taken up issues Nos.7 and 8 together and has noticed that burden of proving these issues was respectively on the non-applicants Nos.4, 5

& 6 and the non-applicants Nos.2 & 3 but none of the drivers of the vehicles appeared in evidence nor any evidence was led as to how the accident occurred and for whose fault and, therefore, these issues have been decided against the non-applicants. The observations on issues Nos.7 and 8 as made by the learned Judge read as under:-

> "इन तनकीयों को साबित करने का भार क्रमश: विपक्षी न0 4, 5, 6 तथा 2 व 3 पर था दोनों वाहनों में से किसी का चालक साक्ष्य में पेश नहीं हुऐ है और न ही इन विपक्षीगण ने और किसी तरह की साक्ष्य ही पेश की है कि दुघर्टना किस तरह से हुई थी और किस वाहन के चालक की गलती से हुई थी। अत: यह तनकी विपक्षीगण के विरूद्ध निर्णीत की जाती है।"

Issue No.9 regarding cause of action has been held redundant and as a result of the discussion aforesaid the claim application has been rejected altogether.

Learned counsel for the claimants has strenuously contended that the Tribunal has been seriously in error in rejecting the claim application; that when the facts were not in dispute that the victim met with his untimely end in the vehicular accident involving the two vehicles and the persons related with both the vehicles were impleaded parties on record, the Tribunal was not justified in relying upon the technical rules of pleading and then want of evidence without looking into the material that was available on record particularly the site inspection memo Ex. 5. Learned counsel

further submitted that the claimants, wife and children of the deceased, have been left stranded with total denial of compensation though the fact remains that victim died due to the vehicular accident, he was 26 years of age, was in settled employment with Indian Oil Corporation and was earning to the extent of Rs.1958/- per month as established by the certificate Ex.2 Learned counsel submitted that if both the drivers are responsible, the case is of their composite negligence and in that event too the claimants are entitled to recover compensation from both or either of them but in any case, the claim application could not have been rejected altogether. Learned counsel Mr. R.K.Singhal appearing for the respondent No.3 National Insurance Company Limited, insurer of the truck, has strenuously contended with reference to the FIR and site inspection report that the accident occurred exclusively for the fault of the jeep driver and, therefore, liability for compensation ought to be fastened upon the persons related to the jeep only. Learned counsel Mr. Sanjeev Johari appearing for the respondent No.6 United India Insurance Company Limited, insurer of the jeep, on the other hand has emphasized that the site inspection report is indicative of the fact that the accident occurred largely for the mistake of the truck driver and contended that if it be a case of composite negligence, the liability is required to apportioned.

Learned counsel also submitted that in the present case though no oral evidence has been led by the insurer as such but available on record is the photostat of the certificate of insurance of the jeep in question and with reference to the same, it ought to be considered that the liability of the insurer qua the passenger in jeep is limited. Learned counsel Mr. J.M.Bhandari appearing for the respondent No.2 Balveer Kumar Jain, owner of the truck has submitted that there was no responsibility of the truck driver for the accident in question and the liability remains that of persons connected with the jeep only.

Before proceeding further, it is felt apposite to put on record appreciation of the stance of the learned counsel for the parties in this case where, though arguing forcefully on their respective viewpoint, none of the learned counsel has attempted to justify an absolutely erroneous approach of the learned Judge of the Tribunal in rejecting the claim application on baseless and rather illogical considerations about want of pleadings and evidence on negligence.

Having examined the record of the case, this Court is clearly of opinion that learned Judge of the Tribunal has fallen in serious error in rejecting the present claim application. The learned Judge has proceeded to observe that the claimants have not pleaded about negligence of respective vehicles and

for want of pleadings and proof of negligence no compensation could be awarded to the claimants. Such an approach is not correct; and the learned Judge has erred on facts as well as in law. A claim for compensation under the Motor Vehicles Act is essentially maintained when a loss is caused to the claimants because of the use of the motor vehicle; and once the claimants have shown that death of their bread-earner was caused by the use of the two vehicles in question, the learned Judge does not appear justified in observing that unless the claimants pleaded negligence of one or both the drivers and proved the same, no compensation could be awarded. So far responsibility towards accident is concerned, the same could have been considered and decided on the basis of the material available on record as shall be considered hereafter; but it is required to be emphasized in the first place that a claim for compensation in a vehicular accident case cannot be rejected on the basis of the considerations as adopted by the learned Judge. The principles of basis of a claim for compensation before a Motor Accidents Claims Tribunal have been summed up by the Hon'ble Supreme Court in S. Kaushnuma Begum & Ors. Vs. The New India Assurance Co. Ltd.: AIR 2001 SC 485 thus, -

> “11. It must be noted that the jurisdiction of the Tribunal is not restricted to decide claims arising out of negligence in the use

> of motor vehicles. Negligence is only one of the species of the causes of action for making a claim for compensation in respect of accidents arising out of the use of motor vehicles. There are other premises for such cause of action."

This Court said in the case of Ali Khan Vs. Vijay Singh and others: 2006(1) ACTC 49 that, -

> ‘‘A cause to maintain a claim for compensation arises not merely for rash and negligent driving of a motor vehicle but it arises out of the use of motor vehicle. Driving is one of the uses of motor vehicle and even if the act of driving itself is performed by the driver with all skill and caution, yet if the use of vehicle causes injury to a person or damage to a property, it cannot be said that merely because there was no fault in driving, no cause for compensation arises."

It has also been pointed out that, -

> Once the strict liability rule is applied, the other species of liability i.e. negligence, ceases to be the prime basis of cause of action and, instead, a person is responsible even for accidental harm even though he is not guilty of either wrongful intent or negligence. These are the cases where the defendant has a duty of "ensuring safety" to the others.

In the present case, the victim Lal Bahadur met with his end only for the use of the vehicles and the claimants were definitely entitled to maintain their claim application without stating negligence as such.

Moreover, in the present case the facts admit of no doubt that the accident leading to death of Lal Bahadur did occur for either bumping of one vehicle into another; or the two vehicles brushing each other; or colliding sideways on the running highway and such incident could not happen but for want of care and caution on the part of one or both drivers. In the context of the deceased Lal Bahadur Soni, an occupant of the jeep, even if it is a case of composite negligence of both drivers, the claimants are entitled to recover compensation from both or either of the tortfeasors. The learned Judge of the Tribunal was entirely in error in refusing the claim application for the reason of want of pleading and proof about negligence. In fact the award made by the Tribunal stands in contradiction in itself when the learned Judge of the Tribunal has decided issue Nos.7 and 8 in relation to the responsibility towards accident of the respective drivers specifically against the non-applicants for want of evidence and yet holding that the claimants were not entitled for any compensation.

Further, for the purpose of responsibility towards the accident, it could be noticed that though no eye-witness to the accident has been produced by the claimants but then none of the drivers of the vehicles involved in the accident have been produced in evidence either; and on that count an adverse inference is required to be drawn against both set of

tortfeasors. The effect of such adverse inference and of the findings on issues Nos. 7 & 8 as noticed supra would have been to hold both set of tortfeasors responsible for accident and liable for compensation, however, a look at the site inspection report Ex.5 brings about a scenario that establishes exclusive fault of the jeep driver for the accident in question.

It has been noticed in the site inspection report that the truck has gone down towards its left at a distance of about 53 ft. from the point of impact whereas the jeep has gone down to a distance of about 130 ft. towards its right from the point of impact. The direction of movement of two vehicles makes it clear that both were proceeding in the same direction from Pali towards Jodhpur; the jeep was following the truck and was definitely in the process of bumping into the rear of the truck and appears to have been taken suddenly to the right but not without the rear right-hand side of truck slicing through the body of jeep. The occupants of the jeep got injured by thus receiving the hit from the right-hand side body of the truck as is apparent from the report that blood stains and so also some pieces of hair were available on rear right-hand side of the truck in a circle of about 4 ft. It has been noticed thus:

> "ट्रक के दाहिने डाले के पीछे के किनारे पर करीब 2" गोलाई में खून व बाल चिपके हुए है तथा पीछे के डाले के दाहिने किनारे पर 4" की गोलाई में खून व बाल चिपके हुए है।"

The jeep had travelled a distance of about 130 ft. towards its right before coming to halt in a ditch; and covering of such extra distance from the point of incident is indicative of fact that jeep was at a high speed and was being driven in uncontrolled manner. The accident occurred at 7.00 a.m. in the month of April, obviously in sufficient day light and there is no reason available on record for which the jeep driver would have bumped into and have had a brush with the truck except for driving in rash, negligent and uncontrolled manner. Nothing has been brought on record to even remotely suggest if the truck driver committed any mistake in maneuvering the truck like sudden application of breaks or sudden severing from the lane. Having regard to the facts and circumstances of the case particularly with reference to the site inspection report, this Court is of opinion that the accident occurred exclusively for the fault of the jeep driver; and the jeep driver and the owner remain liable for compensation.

Coming to the liability of the insurer, though learned counsel Mr. Sanjeev Johari has attempted to make some submissions about limitation of liability but the fact remains that neither any issue in relation to the limited liability was framed nor any evidence has at all been led by the insurer of the jeep so as to consider the submissions sought to be made

in appeal for limited the liability of the insurer. The insurer of the jeep remains liable to satisfy the award against the owner of the jeep.

Coming to the question of quantification of compensation, it is noticed from the certificate Ex.1 that deceased was employed with Indian Oil Corporation and was getting salary of Rs.1,644/- per month; his date of birth was 10.12.1960, hence he was below 27 years of age at the time of accident; and has left behind wife, 24 years of age and two minor children, respectively in 14 months and 3 months of age. The deceased being in settled employment, a reasonable component of future prospects cannot be denied and even on a conservative estimate his average income deserves to be taken at least 1.5 times the last drawn salary; and even when one-third is provided for personal expenditure of the deceased, yet, average loss of dependency comes to Rs.1,644/- per month leading to a multiplicand of Rs.19,728/- per annum. In view of the age of the deceased and the claimants, there appears no reason to apply any multiplier less than 18 in this case. Pecuniary loss, therefore, stands at Rs.3,55,104/- (19,728/- x 18) rounded off to Rs.3,55,000/-. The wife of the deceased deserves to be allowed Rs.10,000/- towards loss of consortium and the children of the deceased Rs.5,000/- each towards loss of love, affection and guidance

of their father. Another sum of Rs.2,000/- deserves to be allowed towards funeral expenses. The claimants are, therefore, entitled for compensation in the sum of Rs.3,77,000/- (3,55,000/- + 10,000/- + 5,000/- + 5,000 + 2,000). The claim application was filed on 13.07.1987 and if the award of compensation was made within a reasonable time, the claimants would have been allowed interest at the then prevailing rather higher rate. However, in the overall facts and circumstances of the case and in view of present rate of interest, this Court is of opinion that interest of justice shall be served if the claimants are allowed interest at the rate of 7.5% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is allowed. The impugned award dated 21.11.1995 is set aside. The claim application submitted by the claimants is partly allowed against the non-applicant Nos.4, 5 and 6 driver, owner and insurer of the jeep involved in the accident and award in the sum of Rs.3,77,000/- is made in favour of the claimants. The claimants shall be entitled to interest at the rate of 7.5% per annum from the date of filing of claim application.

It shall be required of the respondent No.6 to deposit the amount payable under the award within 30 days from today with the Tribunal. Upon deposit the Tribunal shall make

apportionment in the manner that 50% of the award amount shall go to the wife of the deceased and 25% to each of the children. 50% of the amount for each of the claimants be placed in a Monthly Income Scheme of Post Office for a minimum period of six years and the respective claimants shall be entitled to receive periodical interest thereupon. The remaining amount be paid cash to the respective claimants. There shall be no order as to costs of this appeal

(DINESH MAHESHWARI), J.

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